

In re Nancy Jane Radtke and Melvin Frank Radtke

Case No. 05-30640-BKC-SHF

Entered on March 9, 2006

(1) the Trustee's Objection to Debtor's (sic.) Claimed Exemptions, filed by John P. Barbee, chapter 7 trustee ("trustee") (C. P.13), and (2) the Objection to Exemptions and Motion to Set Aside Homestead and Allow Partition of Remainder, filed by Sandy Courts, Inc., a creditor ("Sandy Courts") (C. P. 8).

In their bankruptcy schedules, the debtors claim the entirety of 2.23 acres of real property as exempt pursuant to Article X, Section 4(a)(1) of the Florida Constitution. The property is outside of a municipality, in an unincorporated area of Highlands County, Florida, and is used as the debtors' homestead, in part, and utilized as a mobile home park, in part. The debtors do not own any of the mobile homes or recreational vehicles situated upon their property, but merely collect income from the rental of the mobile home and recreational vehicle lots at the rate of \$180.00 per month for mobile home lots and \$150.00 per month for recreational vehicle lots. Furthermore, the tenants are permitted to rent their mobile homes or recreational vehicles to third parties, and collect rental from their respective "sub-tenants", separate and apart from tenants' obligations to pay monthly lot rental to the debtors.

The Court found no binding authority of the Supreme Court of Florida to suggest that a landowner may claim homestead protection for property utilized in a commercial capacity. Furthermore, the Court found that the language contained in the Florida Constitution was not intended to extend homestead protection to those portions of property which its owner utilizes for commercial enterprise.

Held: the Court **sustained** the Objection to Exemptions and Motion to Set Aside Homestead and Allow Partition of Remainder